

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

KIM WELCH,

Appellant

v.

BOONVILLE NO. 2, INC D/B/A RIVERDELL CARE CENTER.

Respondent

DOCKET NUMBER WD77158

DATE: September 23, 2014

Appeal From:

Circuit Court of Cooper County, MO
The Honorable Robert Lawrence Koffman, Judge

Appellate Judges:

Division Two
Victor C. Howard, P.J., James Edward Welsh, and Anthony Rex Gabbert, JJ.

Attorneys:

Dennis Egan, Kansas City, MO

Counsel for Appellant

Attorneys:

Kimberley Mathis, St. Louis, MO
Robert Tomaso, St. Louis, MO

Counsel for Respondent
Co-Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**KIM WELCH, Appellant, v. BOONVILLE NO. 2, INC
D/B/A RIVERDELL CARE CENTER, Respondent**

WD77158

Cooper County

Before Division Two Judges: Howard, P.J., Welsh, and Gabbert, JJ.

Kim Welch appeals the circuit court's grant of summary judgment in favor of Boonville No. 2, Inc., doing business as Riverdell Care Center ("Riverdell"), on Welch's claim that she was wrongfully discharged from her employment with Riverdell because she made complaints to her employer that a dog was allowed to be in the kitchen area of her work place in violation of a sanitation regulation. Welch asserts that the circuit court erred in granting summary judgment because (1) genuine issues of material fact existed as to whether a contributing factor in her discharge was due to her complaints to Riverdell's administrator about the Director of Nursing's dog repeatedly entering the dining and kitchen areas of the facility in violation of a sanitation regulation, (2) the court erroneously determined that her complaints about Riverdell's violation of the sanitation regulation did not invoke a clear mandate of public policy, (3) the court erroneously determined that, as a matter of law, Welch's complaints to Riverdell's administrator did not constitute protected whistle-blowing.

Affirmed.

Division Two holds:

Welch's second point is dispositive of this appeal. Welch's complaints about Riverdell's violation of 19 CSR 30-87.030(9) did not invoke a clear mandate of public policy. The regulation did not mandate any particular procedure or practice for excluding the dog from the food preparation areas but merely instructed the facility that it should exclude animals from those areas. Riverdell was aware of its responsibilities pursuant to the regulation and gave Welch the responsibility of excluding the dog from the kitchen or dining room. Welch begrudgingly complied with the regulation by removing the dog each time it entered the kitchen. Thus, even if it is conceded that the regulation provides a clear mandate requiring the exclusion of animals from the kitchen, the regulation provided no such mandate on the manner of exclusion. The manner of exclusion, therefore, was a matter of employer policy not public policy. Therefore, Riverdell established its right to summary judgment by showing that Welch would not be able to prove, as a matter of law, a violation of a law and of a well-established and clearly mandated public policy.

Opinion by James Edward Welsh, Judge

September 23, 2014

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